

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 124**

The question is whether the following after-hour activities of an employee with official duties relating to employment training programs [employee] conflict or appear to conflict with his duties:

1. Membership on a Neighborhood Board;
2. Chairmanship of a committee of a business association; and
3. Proprietorship of an import business.

The Ethics Commission [Commission] is of the opinion that none of the foregoing activities would appear to contravene any standard of conduct provisions in the Revised Charter of Honolulu 1973 [RCH] or the Revised Ordinances of Honolulu 1979 [ROH].

The Commission appreciates the concern of the employee regarding the ethical ramifications between his duties with the training program and the aforementioned after-hour activities. Perhaps a brief definition of a conflict of interest may clarify the essence of a conflict between the duties of a public employee and his or her personal business or financial interests. In 73 Michigan Law Review 758 (1975), conflict of interest is defined as:

[A]ny circumstances in which the personal interest of a public official in a matter before him in his official capacity may prevent or appear to prevent him from making an unbiased decision with respect to the matter.

After reviewing the job description, the organizational chart of the division and the responses to questions posed by members of the Commission to the employee, the Commission concludes as follows:

1. Membership on the Neighborhood Board.

Membership on the Neighborhood Board does not fall within the meaning of the definition of business or financial interests found in Section 6-1.1, ROH. This same conclusion is applicable to Section 6-1.2(2), ROH, because membership in the Neighborhood Board does not mean that there is a financial interest in a business enterprise. Thus, Section 11-102.3, RCH, and Section 6-1.2(2), ROH,\* would not apply.

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\* Section 78-5, HRS, governs the holding of two government positions by a public

2. Chairmanship of a committee of a business association.

The employee testified that he does not receive any salary, fee or stipend as a chairman, but his position as a chairman still falls within the ambit of the definition of business found in Section 6-1.2(2), ROH, and Section 11-102.3, RCH. Although his chairmanship is considered as a business, Section 11-102.3, RCH, would not apply because his duties as an employee do not extend over such businesses because the association does not qualify as a subcontractor as it does not have any records of any past employment training program.

Section 6-1.2(2), RCH, also could not apply because the business of his association could not come before him for official action for the reasons stated hereinabove. Moreover, the employee testified that as an employee, he does not have direct contact with the subcontractor because his primary duty is to provide staff services to his agency director.

3. Proprietorship of an importing business.

There is no argument that the employee is a proprietor of a business within the meaning of the word "business" as defined in Section 6-1.2(2), ROH. However, Section 11-102.3, RCH, and Section 6-1.2(2), ROH, would not apply because as the coordinator he does not have jurisdiction over private businesses. Moreover, his business cannot qualify as a subcontractor, even if he were able to exercise jurisdiction over his business as an employee because his business does not have an employee training program. Inasmuch as he does not have jurisdiction over his business as an employee, his business would not be incompatible with the proper discharge of his duties nor would it impair the independence of his judgment. Also, his business could not come before him for official action.

The same discussion in paragraph II, regarding staff services, is also applicable to the employee's importing business. Whether any of the remaining standard of conduct provisions could apply in the three activities mentioned hereinbefore will depend upon the specific facts which are not present for the application of the other standard of conduct provisions. For example, in the application of Section 11-102.5, RCH, there should be facts to indicate that he is about to appear before a City agency on behalf of his business association. Another example is in the application of Section 6-1.2(1), ROH, where facts should show that, he is no longer an employee, but that he, as a representative of his agency, is about to take action contrary to the interests of the City, for the benefit of his business or business association. Therefore, if he is promoted or transferred to another position and his new duties affect or extend to his business or to his business association, the Commission recommends that the employee file his disclosure with his appointing authority so that this Commission may review the effect of his movement.

The Commission commends the employee and his agency head for submitting his disclosure for its examination.

Dated: September 21, 1983

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employee.

Mazeppa K. Costa, Chair  
Ethics Commission